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C O N F I D E N T I A L CARACAS 000577

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TAGS: PHUM PGOV KJUS VE

SUBJECT: JUDGES UNDER FIRE: INTIMIDATION IN VENEZUELA'S
PENAL COURTS

Classified By: A/DCM ABELARDO A. ARIAS FOR REASONS 1.4 (d)

Summary

1. (C) Venezuela's "judicial revolution", heralded by Supreme Court (TSJ) President Omar Mora, has already begun, according to reports from judges. The lawyer of a Chavista leader told one judge she would be fired for refusing to attend a political meeting. Another has resigned just before being fired, after a three year old case was suddenly reactivated and reversed by an appeals court. A Supreme Court justice, who supports President Hugo Chavez, accused the Judicial Committee of the Supreme Court of acting in an unacceptable manner in the recent suspension of two appeals court judges, and said he is worried about the direction the justice system is going. Two other appeals court judges reported that judges are extremely tense, waiting for word of who will be fired, and there are numerous reports of private meetings to decide who to purge. End Summary.

You're either with us, or against us.

2. (C) Caracas criminal trial Judge Beatriz Perez told poloff February 14 that lawyer Jesus Jimenez had called her three days before to tell her that she would be fired because of her friendship with Monica Fernandez. Jimenez represents radical Chavista street activist Lina Ron, who Perez found innocent of assault charges in December 2003. Perez said she protested that she was a qualified and professional judge, who had never attacked the Chavistas, and had not signed the Presidential recall petition. She said Jimenez answered, "We don't care about that. Either you are with us, or against us." According to Perez, Jimenez then told her he had invited her to a political meeting several weeks earlier as a favor and was insulted that she had refused.

3. (C) On February 14, judicial inspectors came to Perez' office to open an investigation against her for a complaint lodged several months earlier. Perez told poloff she was convinced this would be the excuse to fire her. She said that Jimenez had told her she shouldn't complain, given her financial situation. Perez said she was shocked to hear the personal details of her life that Jimenez had. She felt that she had been evaluated based on her susceptibility to pressure, and that she would be fired for being too well off. Perez told poloff she was considering to what extent she should acquiesce to the pressure against her to protect her job and family. She said, "I feel like I am joining a drug gang, and if I do I may not be able to get out again."

Inexcusable error, three years late

4. (C) Caracas criminal trial judge Monica Fernandez told poloff February 18 that she had resigned two days earlier, after being accused of an "inexcusable error", which would lead to her firing. On April 12, 2002 Fernandez ordered then Interior Minister Ramon Rodriguez Chacin confined to his home, on charges based on the allegation that he was no longer a minister following President Chavez' alleged resignation. She ordered Rodriguez freed the next day, when it appeared that Chavez had not resigned, and closed the case. In November 2004, prosecutors opened a criminal investigation against Fernandez, Chacao mayor Leopoldo Lopez, and Baruta mayor Henrique Capriles for this case. On February 15, the 4th Appeals Court of Caracas ruled that Fernandez' action constituted an "inexcusable error", and overturned her actions in the case. According to Fernandez, this is juridically absurd, since the case was closed in Rodriguez's favor, and the period for any appeal had long since lapsed. Fernandez told poloff she believes members of the GOV ordered the court to make the ruling to create an excuse to fire her, and to help the criminal case against her and the two opposition mayors.

I am very worried about the situation.

15. (C) Alejandro Angulo Fontiveros, Supreme Court Justice

in the Penal Chamber, told poloff February 18 that he was "very worried" about the direction the "judicial revolution" proposed by TSJ President Mora may take. Angulo nonetheless strongly defended President Chavez, and said he understood that the GOV had suffered innumerable illegitimate attacks, including from within the justice system. As an example Angulo specifically mentioned the August 2002 ruling by the Supreme Court that the April 11 events were not a coup. However, Angulo said, this did not justify the wholesale politicization of the justice system. He said he was worried that the penal system would be negatively effected by the selection of judges on political grounds, and the purging of judges. Angulo said he had brought these concerns up with TSJ President Mora, and said he was considering whether to remain on the court.

16. (C) Poloff asked Angulo about the recent suspension of two judges from the 10th Criminal Appeals Court of Caracas following their decision to annul a lower court order prohibiting those accused in the Carmona Decree case to leave the country. According to Angulo, the Judicial Committee of the Supreme Court, led by former Movimiento Quinto Republic Deputy Luis Velasquez Alvaray, had immediately suspended the judges and ordered the control judge to reissue the original ruling. This was juridically null and void, according to Angulo, because the Judicial Committee is an administrative body, with no legal right to review decisions or give orders to lower criminal courts. The reconstituted 10th Appeals Court then reversed the original judges, without the case having ever been properly appealed. Fernandez asserts that this is completely anti-juridical, and has never happened in Venezuelan judicial history.

The situation is extremely tense.

17. (C) Judge Leonardo Parra, of the 8th Criminal Appeals Court of Caracas, and Judge Elsa Gomez, of the 4th Criminal Appeals Court of Caracas, told poloff February 16 that the situation in the courts is "extremely tense." The two judges nervously spoke about the latest rumors on who was going to be fired, speculating on the possible firing of Chavista judges involved in corruption. Gomez reported that she had recommended someone for a job as judicial inspector, and that she had been told during the interview, "you must be ready to take orders, and fire whoever you are told, even one of ours." Parra said he believed the ultimate aim of the "judicial revolution" is to create a judicial system entirely subservient to the GOV. Gomez told poloff that the decision in the Fernandez case was regrettable but necessary, because you cannot jail ministers just because someone shows you a piece of paper and says the president resigned.

Drunk with Power?

18. (C) Edgar Lopez, judicial correspondent for the Caracas daily El Nacional, told poloff February 17 that Velasquez had arrived at a meeting of the Judicial Committee of the Supreme Court on February 18 with a list already prepared with judges he wanted to fire. These included temporary and provisional judges. (Note: The Judicial Committee has the authority to fire temporary judges, but in theory provisional judges have extensive protections against summary firing. Fernandez asserted that many have been fired, or forced to retire, but usually with some administrative fig leaf, while Perez says Velasquez had eliminated these rights for provisional judges.) According to Lopez, the other judges on the Judicial Committee balked at Velasquez' proposal to fire provisional judges on a mass scale without any due process. Lopez described Velasquez as "drunk with power," and suggested that he, and not TSJ President Mora, is the real power on the Court. This opinion was shared by Parra and Fernandez.

Comment

110. (C) All indications are that the new TSJ leadership will not be subtle. The message judges are reporting is that absolute loyalty to Chavez's "Bolivarian Revolution" is the sine qua non of the "judicial revolution." How sitting judges react ranges from Perez' quiet desperation as she considers

selling her soul for a job she loves, to Fernandez' defiant resignation. Meanwhile, Parra and Gomez sit nervously and gossip, wondering what is in store for them. Not even Gomez'

loyal service to the revolution seems to grant her any special privileges. The new leadership on the Court is changing the old clientelistic ties among judges. Those Chavista judges who are tied to recently retired TSJ President Ivan Rincon and Alejandro Angulo are no more sure of their positions than other judges. What seems clear is that those judges who survive, and the new judges who join them, will have to be loyal to the revolution.
McFarland

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